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**AUCTION OF ADVANCED WIRELESS SERVICES LICENSES
SCHEDULED FOR JUNE 29, 2006**

**Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures
for Auction No. 66**

AU Docket No. 06-30

Report No. AUC-06-66-B (Auction No. 66)

By the Commission: Chairman Martin and Commissioner Tate issuing separate statements;
Commissioners Copps and Adelstein concurring and issuing separate statements.

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I. GENERAL INFORMATION

A. Introduction

1. By this Public Notice, the Commission announces the procedures, minimum opening bids, and reserve price for the upcoming auction of Advanced Wireless Services licenses in the 1710-1755 MHz and 2110-2155 MHz bands ("AWS-1") scheduled for June 29, 2006 (Auction No. 66).¹ On January 31, 2006, in accordance with Section 309(j)(3) of the Communications Act of 1934, as amended,² the Wireless Telecommunications Bureau ("Bureau") released a public notice seeking comment on a reserve price and minimum opening bid amounts and the procedures to be used in Auction No. 66.³ Interested parties submitted 54 comments and 16 reply comments in response to the *Auction No. 66 Comment Public Notice* as well as a number of *ex parte* or late-filed submissions.⁴

2. In the *Auction No. 66 Comment Public Notice*, the Bureau proposed to include all 1,122 AWS-1 licenses in a single auction using the Commission's standard simultaneous multiple-round ("SMR") auction format.⁵ At the same time, the Bureau sought comment on the feasibility and desirability of allocating the AWS-1 licenses among two auctions, run concurrently, with one of the auctions using the standard SMR format and the other using the Commission's package bidding format

¹ AWS is the collective term used for new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of applications including those using voice and data (such as Internet browsing, message services, and full-motion video) content. For additional information on AWS in general and the AWS-1 bands in particular, see Section I.A.1. "Background of Proceeding," *infra*.

² 47 U.S.C. § 309(j)(3)(E)(i)(requirement to seek comment on proposed auction procedures); see also 47 U.S.C. § 309(j)(4)(F)(authorization to prescribe reserve price or minimum bid).

³ "Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Procedures," *Public Notice*, 21 FCC Rcd 794 (2006) ("*Auction No. 66 Comment Public Notice*").

⁴ A listing of parties that filed comments, reply comments and *ex parte* or late-filed submissions may be found in Attachment B. Parties will be identified in this Public Notice by their abbreviated name as indicated in Attachment B.

⁵ *Auction No. 66 Comment Public Notice* at 1, 4-5. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. A bidder may bid on, and potentially win, any number of licenses. Bidding generally remains open on all licenses until bidding stops on every license.

("SMR-PB").⁶ Based on the record and the particular circumstances of the auction of AWS-1 licenses, the Bureau, as described in more detail below, will include all 1,122 AWS-1 licenses in a single auction using the Commission's standard SMR format, as proposed.⁷ Package bidding will not be used in Auction No. 66.

3. The Bureau also proposed in the *Auction No. 66 Comment Public Notice* to withhold certain information on bidder interests, bids, and bidder identities that typically has been revealed prior to and during past Commission auctions.⁸ The proposal was made in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of an SMR auction may be enhanced if such information is withheld until after the close of the auction.

4. As discussed in detail below, taking into account concerns raised in the record, we have decided to modify our proposal.⁹ First, consistent with a suggested compromise between the proposal and our past practice that was the subject of extensive comment in the record, we will withhold certain information unless it appears that the auction will be sufficiently competitive that any anti-competitive behavior addressed by the original proposal would be unlikely to be successful.¹⁰ To gauge the likely level of competition in this upcoming auction, we will evaluate the level of prospective bidders' bidding eligibility. Specifically, if all the bidders' bidding eligibility, measured in bidding units (subject to a cap on the amount of any one bidder's eligibility) divided by all licenses in the auction, measured in bidding units is equal to or greater than three, we believe the auction will be sufficiently competitive. For the purposes of determining the modified eligibility ratio, the bidding eligibility of any one bidder may be no more than 50 percent of the bidding units of all licenses in the auction. If the modified eligibility ratio is three or greater, the likely level of competition should be sufficient to make anti-competitive outcomes difficult to sustain. Second, if the modified eligibility ratio is less than three and, therefore, certain information is withheld, we will follow the original proposal with two changes: (1) we will release each bidder's eligibility and upfront payment made prior to the start of the auction; and (2) we will release all gross bids for each license (including the losing bids) after each round, but not bidder identities. We believe this compromise provides bidders with additional information regarding license valuations without compromising the proposal's goal of reducing the potential for anti-competitive outcomes.

5. Pursuant to these procedures, license selection information will be withheld, at least initially. Therefore, to enable applicants to comply with the Commission's anti-collusion rules, each applicant with a short-form application to participate in a pending auction will receive a letter that lists the applicants in Auction No. 66 that have applied for licenses in any of the same geographic areas as the applicant, once the Bureau has conducted its initial review of applications to participate in Auction No. 66.¹¹

⁶ Under the Commission's package bidding rules, bidders would be able to place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them.

⁷ See Section IV.A.1. "Simultaneous Multiple Round Auction," *infra*.

⁸ *Auction No. 66 Comment Public Notice* at 2, 6-7.

⁹ See Section IV.A.2. "Information Available to Bidders Before and During the Auction," *infra*.

¹⁰ *Id.*

¹¹ The list will identify the Auction No. 66 applicant(s) by name but will not list the license selections of the Auction No. 66 applicant(s). As in past auctions, additional information regarding applicants in Auction No. 66 that is needed to comply with section 1.2105(c), *e.g.*, the identities of controlling interest in the applicant and of ownership interests greater than ten percent (10%), will be available through the publicly accessible on-line short-form application database. See *id.*

6. Furthermore, the *Auction No. 66 Comment Public Notice* proposed an aggregate reserve price of \$1,029,534,343.20 for all AWS-1 licenses in order to implement a Congressional mandate to recover estimated relocation costs for government incumbent operators in the lower (1710-1755 MHz) AWS-1 spectrum band.¹² By law, the Commission cannot conclude any auction of statutorily-defined eligible frequencies if the total cash proceeds attributable to such spectrum are less than 110 percent of the total estimated relocation costs of eligible federal entities assigned to the frequencies.¹³ The lower half of the frequencies covered by AWS-1 licenses, 1710-1755 MHz, are eligible frequencies.¹⁴ Accordingly, the Commission will cancel the auction if the winning bids net of applicable discounts at the end of bidding that are attributable to such spectrum are less than 110 percent of the total estimated relocation costs, or \$1,029,534,343.20.¹⁵ Given that one-half of the frequencies authorized for use by each license are CSEA eligible frequencies, one-half of each winning bid, net of any applicable bidding credit discounts at the end of bidding (e.g., exclusive of tribal lands bidding credits), will be counted toward meeting this reserve price. Therefore, the winning bids (net of bidding credits) in the auction must total at least approximately \$2.06 billion in order for the Commission to conclude the auction and award the licenses.

1. Background of Proceeding

7. Growth in demand for mobile wireless services, coupled with the rise of the Internet and greater broadband availability, have increased the need for additional spectrum and advanced technologies capable of providing advanced wireless services, including wireless Internet access and other high-speed information and entertainment services. Enhancements to current wireless network technologies, as well as the development of new technologies, are continuing to improve and expand the deployment of wireless broadband.¹⁶ These new technologies are more advanced than analog cellular (first generation, or 1G) and digital cellular (second generation or 2G), and are often labeled 2.5G, 3G, 4G, and so on.¹⁷ Mobile telephone carriers have recently begun to deploy significantly faster broadband technologies on their mobile cellular networks, and many have announced plans to launch or expand these technologies further in the future.

8. In order to facilitate the rapid deployment of broadband technologies, the Commission has allocated spectrum to meet the demand for advanced wireless services. In the *Second Report and Order* in ET Docket No. 00-258, the Commission allocated the 1710-1755, 2110-2150 and 2150-2155 MHz

¹² See Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in various sections of Title 47 of the United States Code) ("CSEA"), § 202 (codified at 47 U.S.C. § 923(g)(2)).

¹³ *Id.*, § 203(b) (Section 203(b) amended Section 309(j) by adding at the end a new paragraph (15)).

¹⁴ *Id.*, § 202.

¹⁵ *Auction No. 66 Comment Public Notice* at 2, 14. CSEA, § 203(b).

¹⁶ See Report, Wireless Broadband Access Task Force, GN Docket No. 04-163 (Feb. 2005).

¹⁷ Although AWS is commonly associated with so-called third generation ("3G") applications and has been predicted to build on the success of such current-generation commercial wireless services as cellular and broadband Personal Communication Services, the services ultimately provided by AWS licensees are limited only by the Fixed and Mobile designation of the spectrum allocated for AWS and the service rules adopted for the bands. The International Telecommunication Union (ITU) has defined 3G network technologies as those that can offer maximum data transfer speeds of 2 megabits per second (Mbps) from a fixed location, 384 kbps at pedestrian speeds, and 144 kbps at traveling speeds of 100 kilometers per hour. The term "2.5G" is often used to describe the interim technologies that carriers have used to migrate from their 2G technologies of CDMA, TDMA, GSM, and iDEN to 3G technologies. See Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, WT Docket No. 05-71, *Tenth Report*, 20 FCC Rcd 15908, 15951 n. 252 (2005) ("*Tenth CMRS Competition Report*").

bands for AWS-1 and combined these latter two bands into a single 45-megahertz allocation (*i.e.*, 2110-2155 MHz).¹⁸ The Commission subsequently adopted service rules for AWS in these bands, including application, licensing, operating and technical rules.¹⁹

9. Making this spectrum available requires relocating incumbent operations, both Federal Government (“Government”) and non-Federal Government (“non-Government”). Relocation of Government operations is subject to CSEA.²⁰ For non-Government operations, the Commission’s *Emerging Technologies* proceeding adopted a relocation policy designed to allow early entry for new technology providers into reallocated spectrum by allowing providers of new services to negotiate financial arrangements for reaccommodation of incumbent licensees.²¹ This policy was also designed to allow gradual relocation of incumbents during which, as the new entrant deployed individual sites throughout its geographic license area over time, the new entrant was obligated to relocate incumbent facilities on a link-by-link basis (in the case of microwave facilities), based on an interference analysis.

¹⁸ See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Second Report and Order*, 17 FCC Rcd 23193 (2002) (“*AWS Allocation Second Report and Order*”). In addition to the spectrum located in the 1710-1755 and 2110-2155 MHz bands, the Commission has designated spectrum in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands for AWS use (“AWS-2”). See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order*, 19 FCC Rcd 20720 (2004). And the Commission has allocated an additional 20 MHz of spectrum at 2155-2175 MHz suitable for AWS uses adjacent to the upper 45 megahertz of AWS-1. See Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, *Eighth Report and Order, Fifth Notice of Proposed Rulemaking and Order*, 20 FCC Rcd 15866 (2005) (“*AWS Eighth Report and Order*” and “*AWS Fifth Notice*”). See generally ET Docket No. 00-258 and ET Docket No. 95-18.

¹⁹ See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, *Report and Order*, WT Docket No. 02-353, 18 FCC Rcd 25162 (2003); *modified by Order on Reconsideration*, 20 FCC Rcd 14058 (2005) (codified at 47 C.F.R. Part 27, Subpart L) (“*AWS Service Rules Order*”). The Commission has also proposed service rules for the AWS-2 spectrum. See Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 04-356, *Notice of Proposed Rule Making*, 19 FCC Rcd 19263 (2004) (“*AWS-2 Service Rules NPRM*”).

²⁰ See *infra* paras. 25-26, 30-31.

²¹ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and Third Notice of Proposed Rule Making*, 7 FCC Rcd 6886 (1992); *Second Report and Order*, 8 FCC Rcd 6495 (1993); *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993); *Memorandum Opinion and Order*, 9 FCC Rcd 1943 (1994); *Second Memorandum Opinion and Order*, 9 FCC Rcd 7797 (1994); *aff’d Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, “*Emerging Technologies proceeding*”). See also *Teledesic, LLC v. FCC*, 275 F.3d 75 (D.C. Cir. 2001) (affirming modified relocation scheme for new satellite entrants to the 17.7 – 19.7 GHz band). See also Amendment to the Commission’s Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95-157, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 8825 (1996); *Second Report and Order*, 12 FCC Rcd 2705 (1997); *Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 13999 (2000) (collectively, “*Microwave Cost Sharing proceeding*”).

2. Licenses to be Auctioned

10. Auction No. 66 will offer 1,122 licenses: 36 Regional Economic Area Grouping ("REAG") licenses, 352 Economic Area ("EA") licenses, and 734 Cellular Market Area ("CMA") licenses.²²

11. The following table describes the AWS-1 licenses that will be offered in Auction No. 66:

Block	Frequency Bands (MHz)	Total Bandwidth	Geographic Area Type	No. of Licenses
A	1710-1720 / 2110-2120	20 MHz	CMA	734
B	1720-1730 / 2120-2130	20 MHz	EA	176
C	1730-1735 / 2130-2135	10 MHz	EA	176
D	1735-1740 / 2135-2140	10 MHz	REAG	12
E	1740-1745 / 2140-2145	10 MHz	REAG	12
F	1745-1755 / 2145-2155	20 MHz	REAG	12

12. A complete list of the AWS-1 licenses available in Auction No. 66 is also included in Attachment A of this Public Notice.

B. Rules and Disclaimers

1. Relevant Authority

13. Prospective applicants must familiarize themselves thoroughly with the Commission's general competitive bidding rules set forth in Title 47, Part 1, of the Code of Federal Regulations, including recent amendments and clarifications;²³ rules relating to the Advanced Wireless Services and emerging technologies contained in Title 47, Parts 27 and 101, of the Code of Federal Regulations; and

²² The CMA licenses consist of both Metropolitan Statistical Area ("MSA") and Rural Service Area ("RSA") licenses. MSAs and RSAs were originally used to license cellular service. See 47 C.F.R. § 22.909. The Commission refined and used these areas for licensing the Lower 700 MHz band. See 47 C.F.R. § 27.6(c)(2). For purposes of the 1710-1755 and 2110-2155 MHz bands, the Commission stated that it will use the same MSAs and RSAs used for licensing the Lower 700 MHz band. *AWS-1 Service Rules Order*, 18 FCC Rcd at 25176 n.83. CMAs cannot be combined to form EAs because several CMAs cross EA borders.

²³ See, e.g., Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Report and Order*, 21 FCC Rcd 891 (2006) ("CSEA/Part 1 Report and Order"), petitions for reconsideration pending; Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Second Order on Reconsideration of the Third Report and Order*, and *Order on Reconsideration of the Fifth Report and Order*, 18 FCC Rcd 10180 (2003) ("Order on Reconsideration of the Part 1 Fifth Report and Order"). The Commission has recently released a Further Notice of Proposed Rulemaking in the latter proceeding, in which it considers whether to modify its general competitive bidding rules governing benefits reserved for designated entities (i.e., small businesses, rural telephone companies, and businesses owned by women and minorities). See Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, WT Docket No. 05-211, *Further Notice of Proposed Rule Making*, 21 FCC Rcd 1753 (2006) ("CSEA/Part 1 Designated Entity FNPRM").

rules relating to applications, practice and procedure contained in Title 47, Part 1, of the Code of Federal Regulations. Prospective applicants must also be thoroughly familiar with the procedures, terms and conditions (collectively, “terms”) contained in this Public Notice and the Commission’s decisions in proceedings regarding competitive bidding procedures, application requirements, and obligations of Commission licensees.²⁴

14. The terms contained in the Commission’s rules, relevant orders, and public notices are not negotiable. The Commission may amend or supplement the information contained in our public notices at any time, and will issue public notices to convey any new or supplemental information to applicants. It is the responsibility of all applicants to remain current with all Commission rules and with all public notices pertaining to this auction. Copies of most auctions-related Commission documents, including public notices, can be retrieved from the FCC Auctions Internet site at <http://wireless.fcc.gov/auctions>. Additionally, documents are available for public inspection and copying between 8:00 a.m. and 4:30 p.m. Eastern Time (ET) Monday through Thursday or 8:00 a.m. to 11:30 a.m. ET Fridays at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Documents may also be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (“BCPI”), 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or at <http://www.bcpweb.com>.²⁵

2. Prohibition of Collusion; Compliance with Antitrust Laws

15. To ensure the competitiveness of the auction process, Section 1.2105(c) of the Commission’s rules prohibit applicants competing for licenses in any of the same geographic license areas from communicating with each other about bids, bidding strategies, or settlements unless such applicants have identified each other on their short-form applications (FCC Forms 175) as parties with whom they have entered into agreements pursuant to Section 1.2105(a)(2)(viii).²⁶ In Auction No. 66, the rule would apply to any applicants bidding for the same CMA, EA, or REAG. The rule would also apply to applicants bidding for licenses in overlapping CMAs, EAs, and REAGs. For example, assume that one applicant applies for an REAG and a second applicant applies for an EA covering any area within that REAG. The two entities will have applied for licenses covering the same geographic areas and would be precluded from communicating with each other under the rule. In addition, the rule would preclude applicants that apply to bid for all markets from communicating with all other applicants. Thus, applicants that have applied for the same markets (unless they have identified each other on their FCC

²⁴ See, e.g., Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Second Report and Order*, 9 FCC Rcd 2348 (1994) (*Competitive Bidding Second Report and Order*); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15293 (2000) (modified by Erratum, DA 00-2475 (rel. Nov. 3, 2000)) (“*Part 1 Fifth Report and Order*”); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Seventh Report and Order*, 16 FCC Rcd 17546 (2001) (“*Part 1 Seventh Report and Order*”) (amending the anti-collusion rule, which is codified at 47 C.F.R. § 1.2105(c)); Amendment of Part 1 of the Commission’s Rules — Competitive Bidding Procedures, *Eighth Report and Order*, 17 FCC Rcd 2962 (2002) (amending Section 1.2110 of the Commission’s rules); *Second Order on Reconsideration of the Fifth Report and Order*, 20 FCC Rcd 1942 (2005) (“*Second Order on Reconsideration of the Fifth Report and Order*”) (further amending Section 1.2110 to exempt the gross revenues of the affiliates of a rural telephone cooperative’s officers and directors from attribution to the applicant and adopting other modifications to the competitive bidding rules); *CSEA/Part 1 Report and Order*.

²⁵ When ordering documents from BCPI, please provide the appropriate FCC document number (for example, DA 06-238 for the *Auction No. 66 Comment Public Notice*, or FCC 06-47 for this Public Notice).

²⁶ 47 C.F.R. § 1.2105(c)(1); 47 C.F.R. § 1.2105(a)(2)(viii). See also *Part 1 Seventh Report and Order*, 16 FCC Rcd 17546 (2001); *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15297-98 ¶¶ 7-8.

Form 175 applications as parties with whom they have entered into agreements under Section 1.2105(a)(2)(viii)) must affirmatively avoid all communications with or disclosures to each other that affect or have the potential to affect bids or bidding strategy, which may include communications regarding the post-auction market structure.²⁷ This prohibition begins at the short-form application filing deadline and ends at the down payment deadline after the auction.²⁸ **This prohibition applies to all applicants regardless of whether such applicants become qualified bidders or actually bid.**²⁹ (As described in Section IV.A.2., below, information concerning applicants' license selections may not be made public during the auction. If that occurs, the Commission will inform each applicant by letter of the identity of each of the other applicants that has applied for any of the same geographic areas that it has selected in its short form application.³⁰)

16. For purposes of this prohibition, Section 1.2105(c)(7)(i) defines "applicant" as including all officers and directors of the entity submitting a short-form application to participate in the auction, all controlling interests of that entity, as well as all holders of partnership and other ownership interests and any stock interest amounting to 10 percent or more of the entity, or outstanding stock, or outstanding voting stock of the entity submitting a short-form application.³¹

17. Applicants for licenses for any of the same geographic license areas must not communicate directly or indirectly about bids or bidding strategy.³² Accordingly, such applicants are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more applicants, and conveys information concerning the substance of bids or bidding strategies between such applicants. Also, if the authorized bidders are different individuals employed by the same organization (e.g., law firm or engineering firm or consulting firm), a violation similarly could occur.³³ In such a case, at a minimum, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.³⁴ A violation of the anti-collusion rule could occur in other contexts, such as an individual serving as an officer for two or more applicants.³⁵ Moreover, the Commission has found a

²⁷ See, e.g., "Wireless Telecommunications Bureau Provides Guidance on the Anti-Collusion Rule for D, E. and F Block Bidders," *Public Notice*, DA 96-1460 (rel. August 28, 1996).

²⁸ 47 C.F.R. § 1.2105(c)(1).

²⁹ See, e.g., Application of Star Wireless, LLC, *Forfeiture Order*, 19 FCC Rcd 18626, 18628 4, n. 19 (2004), application for review pending (collusion rule applies to "applicants" regardless of whether they are qualified to bid); Letter to Robert Pettit, Counsel for Noverr Publishing, Inc., from Margaret W. Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 16 FCC Rcd 10080 (2000) (declining to except an applicant's controlling interest from coverage by the anti-collusion rule, even though the applicant never made an upfront payment for the auction and was not listed as a qualified bidder).

³⁰ See Section IV.A.2. "Information Available to Bidders Before and During the Auction," *infra*, especially ¶ 158.

³¹ 47 C.F.R. § 1.2105(c)(7)(i).

³² *Part I Seventh Report and Order*, 16 FCC Rcd at 17549-50 ¶ 6.

³³ See Application of Nevada Wireless for a License to Provide 800 MHz Specialized Mobile Radio Service in the Farmington, NM-CO Economic Area (EA-155) Frequency Band A, *Memorandum Opinion and Order*, 13 FCC Rcd 11973, 11977 ¶ 11 (1998) ("*Nevada Wireless MO&O*").

³⁴ *Id.*

³⁵ See, e.g., Letter to Colby M. May, TCCSA, Inc., d/b/a Trinity Broadcasting Network, from Barbara A. Kreisman, Chief, Video Division, Media Bureau, and Margaret W. Wiener, Chief, Auctions and Spectrum Access Division, Wireless Telecommunications Bureau, 20 FCC Rcd 14648 (2005) (finding apparent violation of anti-collusion rule (continued....))

violation of the anti-collusion rule where a bidder used the Commission's bidding system to disclose "its bidding strategy in a manner that explicitly invited other auction participants to cooperate and collaborate in specific markets,"³⁶ and has placed auction participants on notice that the use of its bidding system "to disclose market information to competitors will not be tolerated and will subject bidders to sanctions."³⁷ Bidders are cautioned that the Commission remains vigilant about prohibited communications taking place in other situations. For example, the Commission has warned that prohibited "communications concerning bids and bidding strategies may include communications regarding capital calls or requests for additional funds in support of bids or bidding strategies to the extent such communications convey information concerning the bids and bidding strategies directly or indirectly."³⁸ Auction participants are hereby placed on notice that public disclosure of information relating to bidder interests, bids and bidder identities that typically has been revealed prior to and during past Commission auctions may violate the anti-collusion rule.³⁹ Bidders should use caution in their dealings with other parties, such as members of the press, financial analysts, or others who might become a conduit for the communication of prohibited bidding information.

18. The Commission's rules do not prohibit applicants from entering into otherwise lawful bidding agreements before filing their short-form applications, as long as they disclose the existence of the agreement(s) in their short-form application.⁴⁰ If parties agree in principle on all material terms prior to the short-form filing deadline, each party to the agreement must identify the other party or parties to the agreement on its short-form application under Section 1.2105(c), even if the agreement has not been reduced to writing. If the parties have not agreed in principle by the short-form filing deadline, they should not include the names of parties to discussions on their applications, and they may not continue negotiations, discussions or communications with any other applicants after the short-form filing deadline.⁴¹

19. By electronically submitting its short-form application, each applicant certifies its compliance with Section 1.2105(c). However, we caution that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred, nor will it preclude the initiation of an investigation when warranted.⁴² The Commission has stated that it "intend[s] to scrutinize carefully any instances in which bidding patterns suggest that collusion may be occurring."⁴³ Any applicant found to have violated the anti-collusion rule may be subject to sanctions.⁴⁴

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where applicants with mutually exclusive applications reported sharing same individual as an officer and director and reported having no bidding agreement).

³⁶ Mercury PCS II, LLC, *Notice of Apparent Liability for Forfeiture*, 12 FCC Rcd 17970, 17976 ¶ 12 (1997).

³⁷ Mercury PCS II, LLC, *Memorandum Opinion and Order*, 13 FCC Rcd 23755, 23760 ¶ 11 (1998).

³⁸ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

³⁹ Cf. Wireless Telecommunications Bureau Responds to Questions About the Local Multipoint Distribution Service Auction, *Public Notice*, 13 FCC Rcd 341, 347-8 (1998) ("Public statements can give rise to collusion concerns. This has occurred in the antitrust context, where certain public statements can support other evidence which tends to indicate the existence of a conspiracy.").

⁴⁰ 47 C.F.R. § 1.2105(c)(7)(i).

⁴¹ See Wireless Telecommunications Bureau Clarifies Spectrum Auction Anti-Collusion Rules, *Public Notice*, 11 FCC Rcd 9645 (1995) ("Anti-Collusion Public Notice").

⁴² *Nevada Wireless MO&O*, 13 FCC Rcd at 11978 ¶ 13.

⁴³ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994).

20. Applicants are also reminded that, regardless of compliance with the Commission's rules, they remain subject to the antitrust laws, which are designed to prevent anticompetitive behavior in the marketplace.⁴⁵ Compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.⁴⁶ For instance, a violation of the antitrust laws could arise out of actions taking place well before any party submits a short form application.⁴⁷ The Commission has cited a number of examples of potentially anticompetitive actions that would be prohibited under antitrust laws: for example, actual or potential competitors may not agree to divide territories horizontally in order to minimize competition, regardless of whether they split a market in which they both do business, or whether they merely reserve one market for one and another for the other.⁴⁸ Similarly, the Bureau has long reminded potential applicants and others that "[e]ven where the applicant discloses parties with whom it has reached an agreement on the short-form application, thereby permitting discussions with those parties, the applicant is nevertheless subject to existing antitrust laws."⁴⁹ To the extent the Commission becomes aware of specific allegations that may give rise to violations of the federal antitrust laws, the Commission may refer such allegations to the United States Department of Justice for investigation.⁵⁰ If an applicant is found to have violated the antitrust laws or the Commission's rules in connection with its participation in the competitive bidding process, it may be subject to forfeiture of its upfront payment, down payment, or full bid amount and may be prohibited from participating in future auctions, among other sanctions.⁵¹

21. Section 1.65 of the Commission's rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application.⁵² Thus, Section 1.65 requires an auction applicant to notify the Commission of any substantial change to the information or certifications included in its pending short-form application. Applicants are therefore required by Section 1.65 to report to the Commission any communications they have made to or received from another applicant after the short-form filing deadline that affect or have the potential to affect bids or

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⁴⁴ See 47 C.F.R. §§ 1.2105(c), 1.2107(d), and 1.2109(d).

⁴⁵ See Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Further Notice of Proposed Rule Making*, 14 FCC Rcd 21558, 21560 ¶ 4 and n. 4 (1999) citing Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, *Memorandum Opinion and Order*, 9 FCC Rcd 7684, 7689 ¶ 12 (1994) ("[W]e wish to emphasize that all applicants and their owners continue to be subject to existing antitrust laws. Applicants should note that conduct that is permissible under the Commission's Rules may be prohibited by the antitrust laws."); Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994)("[A]pplicants will also be subject to existing antitrust laws.").

⁴⁶ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226. See also "Justice Department Sues Three Firms Over FCC Auction Practices," *Press Release* 98-536 (DOJ Nov. 10, 1998).

⁴⁷ The Commission has cited a number of examples of such anticompetitive behavior. See, e.g., Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994).

⁴⁸ Implementation of Section 309(j) of the Communications Act-Competitive Bidding, PP Docket No. 93-253, *Fourth Memorandum Opinion & Order*, 9 FCC Rcd 6858, 6869 n. 134 (1994); see also *Anti-Collusion Public Notice*.

⁴⁹ See *Anti-Collusion Public Notice*.

⁵⁰ See *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵¹ See 47 C.F.R. § 1.2109(d); see also *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2388 ¶ 226.

⁵² 47 C.F.R. § 1.65.

bidding strategy unless such communications are made to or received from parties to agreements identified under Section 1.2105(a)(2)(viii). In addition, Section 1.2105(c)(6) provides that any applicant that makes or receives a communication prohibited by Section 1.2105(c) must report such communication to the Commission in writing immediately, and in no case later than five business days after the communication occurs.⁵³

22. Applicants that are winning bidders will be required to disclose in their long-form applications the specific terms, conditions, and parties involved in all bidding consortia, joint ventures, partnerships, and other arrangements entered into relating to the competitive bidding process.⁵⁴

23. A summary listing of documents issued by the Commission and the Bureau addressing the application of the anti-collusion rule may be found in Attachment G. These documents are available on the Commission's auction anti-collusion web page.⁵⁵

3. Incumbency Issues

24. The AWS-1 bands are now being used for a variety of Government and non-Government services. The 1710-1755 MHz band is currently a Government band.⁵⁶ The 2110-2150 MHz band is used by private (including state and local governmental public safety services) and common carrier fixed microwave services.⁵⁷ The 2150-2155 MHz band is currently used by the Broadband Radio Service ("BRS").⁵⁸

⁵³ 47 C.F.R. § 1.2105(c)(6); see also *Part 1 Seventh Report and Order*, 16 FCC Rcd at 17555 ¶ 17.

⁵⁴ 47 C.F.R. § 1.2107(d).

⁵⁵ <http://wireless.fcc.gov/auctions/anticollusion>

⁵⁶ In the Omnibus Budget Reconciliation Act of 1993 ("OBRA-93"), Congress directed the Secretary of Commerce to identify at least 200 megahertz of spectrum below 5 GHz for transfer to non-Federal services. 47 U.S.C. § 923. NTIA identified the band 1710-1755 MHz for transfer, with certain Federal operations to remain protected indefinitely. See *Spectrum Reallocation Final Report, Response to Title VI Omnibus Budget Reconciliation Act of 1993*, NTIA Special Publication 95-32, at App. E and page F-4 (Feb. 1995). Subsequently, NTIA concluded that most of the protected Federal operations could relocate or modify their operations to allow reallocation of the band for AWS. See NTIA Report, "An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands," at 1-2 (July 22, 2002) ("*NTIA AWS Assessment*") (available at <http://www.ntia.doc.gov/ntiahome/threeg/va7222002/3Gva072202web.htm>). The Commission sought comment on the *NTIA AWS Assessment*. FCC Seeks Comment on the National Telecommunications and Information Administration's Report, *An Assessment of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands*, ET Docket No. 00-258, *Public Notice*, 17 FCC Rcd 14390 (2002). The *NTIA AWS Assessment* was incorporated into Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Fourth Notice of Proposed Rulemaking*, 18 FCC Rcd 13235 (2003).

⁵⁷ See Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00-258, *Notice of Proposed Rule Making*, 16 FCC Rcd 596, 617-18 (2001).

⁵⁸ See *AWS Allocation Second Report and Order*, 17 FCC Rcd at 23208-13 ¶¶ 34-41. The Commission has decided to clear BRS from the 2150-2155 MHz band as part of a fundamental restructuring of the service. See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rule Making*, 19 FCC Rcd 14165, 14177-78 ¶¶ 23-24 (2004) ("*BRS Report and Order*").

25. Relocation of Government Incumbents; Spectrum Relocation Fund. The 1710-1755 MHz spectrum is covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent federal entities.⁵⁹ Specifically, the CSEA established a Spectrum Relocation Fund ("SRF"), to which the cash proceeds attributable to "eligible frequencies" in the AWS-1 license auction will be deposited.⁶⁰

26. CSEA also prohibits the Commission from concluding any auction of eligible frequencies if the total cash proceeds attributable to such spectrum are less than 110 percent of the estimated relocation costs provided to the Commission by the National Telecommunications and Information Administration ("NTIA").⁶¹ NTIA has collected estimates of the relocation costs for the "eligible frequencies" in the AWS-1 band. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission of the estimated relocation costs and timelines for relocation of eligible federal entities assigned to frequencies from 1710 to 1755 MHz.⁶² NTIA reported that the total estimated relocation costs equal \$935,940,312. More information is available at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>.

27. Relocation of Non-Government Incumbents. The Commission is in the process of determining how to apply the policies adopted in the *Emerging Technologies* proceeding⁶³ to the relocation of incumbent fixed microwave and BRS licensees in the 2110-2150 and 2150-2155 MHz bands, respectively. In the *Fifth Notice of Proposed Rule Making* ("AWS Fifth Notice") in ET Docket No. 00-258, the Commission is seeking comment on the specific relocation and cost-sharing procedures applicable to BRS operations in the 2150-2160/62 MHz band,⁶⁴ which the Commission recently decided will be relocated to the newly restructured 2495-2690 MHz band.⁶⁵ In the *AWS Fifth Notice*, the Commission is also seeking comment on cost-sharing obligations and procedures associated with relocation obligations for the 2110-2155 MHz band.⁶⁶ In doing so, the *AWS Fifth Notice* also referenced

⁵⁹ CSEA, § 202.

⁶⁰ *Id.*, §§ 201-209. Eligible frequencies comprise four bands specified in CSEA (the 216-220 MHz, 1432-1435 MHz, 1710-1755 MHz and 2385-2390 MHz bands), as well as any other band of frequencies reallocated from federal use to non-federal use after January 1, 2003, and assigned by the Commission through competitive bidding. *Id.*, § 202. Bands of frequencies previously identified by the National Telecommunications and Information Administration in the Spectrum Reallocation Final Report, NTIA Special Publication 95-32 (1995), are excluded. *Id.*

⁶¹ *Id.*, § 203(b). CSEA also requires that, at the same time, NTIA submit for approval its estimate of relocation costs and the timelines for relocation to the Senate Committees on Appropriations, and Commerce, Science, and Transportation, the House of Representatives Committees on Appropriations and Energy and Commerce, and the Comptroller General. Unless disapproved by these committees within 30 days, the estimate "shall be approved." *Id.*, § 202.

⁶² See Letter from Michael D. Gallagher, Assistant Secretary for Communications and Information, United States Department of Commerce, to Kevin J. Martin, Chairman, Federal Communications Commission, dated December 27, 2005.

⁶³ See *supra* note 20.

⁶⁴ See generally *AWS Fifth Notice*, 20 FCC Rcd 15866.

⁶⁵ See *BRS Report and Order*, 19 FCC Rcd 14165, 14183-84 ¶¶ 37-38. See also, Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands; Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, IB Docket No. 02-364, ET Docket No. 00-258, *Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 13386 (2004) ("Big LEO Spectrum Sharing Order").

⁶⁶ See *AWS Fifth Notice*, 20 FCC Rcd at 15885-90 ¶¶ 43-52.

the Commission's earlier request in the *AWS-2 Service Rules NPRM* for comments on the appropriate procedures for apportioning relocation costs among multiple AWS licensees in the 2110-2150 MHz band.⁶⁷ The Commission is also currently considering petitions for reconsideration that raise issues concerning the conditions under which the 2495-2500 MHz band would be available to BRS and the suitability of that spectrum for BRS operations.⁶⁸

4. Protection of Incumbent Government and Non-Government Operations

28. AWS licensees must comply with the technical and operational rules set forth in 47 C.F.R. §§ 27.50-27.66 and 27.1131-27.1135. The latter set of rules describes the procedures AWS licensees must follow to protect co-channel and adjacent channel incumbent Government and non-Government operations from interference. Such operations requiring protection include: Part 101 fixed-point-to-point facilities in the 2110-2155 MHz band; BRS operations in the 2150-2155 MHz band; Broadcast Auxiliary Service ("BAS") and Cable Television Radio Service ("CARS") operations in the 2025-2110 MHz band; Department of Defense ("DOD") communications systems in the 1710-1755 MHz band at 16 protected facilities nationwide; non-DOD Federal Government systems operating in the 1710-1755 MHz and 1755-1761 MHz bands; radiosonde receivers operating in the Meteorological Aids Service in the 1675-1700 MHz band; and meteorological-satellite earth receivers operating in the Meteorological-Satellite Service in the 1675-1710 MHz band. The following paragraphs generally describe procedures that AWS licensees must follow to protect incumbent Government and non-Government operations.

29. *The 1710-1755 MHz band.* According to NTIA, this spectrum is used by the Federal Government for both military and non-military operations.⁶⁹ Sixteen DOD facilities in the country are classified as "protected facilities," and various types of systems operate at these locations. AWS licensees must protect systems operating at these facilities from interference until such systems are relocated to other spectrum.⁷⁰ These restrictions shall apply until such time as the relocation of the Federal systems has been completed, and indefinitely in the case of systems at the Yuma, Arizona, and Cherry Point, North Carolina, locations.⁷¹ Furthermore, AWS licensees will be required to accept any interference received from operations at the 16 facilities. Such interference could occur at large distances outside the facilities' operating radii due to airborne operations within the radii.

30. The CSEA permits the Commission to grant commercial licenses in these bands prior to relocation of federal government operations and the termination of a federal entity's authorization.⁷²

⁶⁷ *Id.* at 15886 ¶ 45, citing *AWS-2 Service Rules NPRM*, 19 FCC Rcd 19263, 19282-84 ¶¶ 46-49.

⁶⁸ See, e.g., Petition for Reconsideration filed by Sprint Corporation, Nextel Corporation, and Wireless Communications Association International, Inc., IB Docket No. 02-364 (arguing that 2495-2500 MHz is not suitable relocation spectrum because spectrum must be shared with other services); Petition for Reconsideration filed by Globalstar Corporation, IB Docket No. 02-364 (arguing that BRS operations in the 2495-2500 MHz band should be limited to the top 35 metropolitan statistical areas).

⁶⁹ See NTIA website at <http://www.ntia.doc.gov/osmhome/reports/spec relo/index.htm>.

⁷⁰ See 47 C.F.R. § 27.1134(a). Specifically, AWS licensees must protect Government stations within the "radii of operation" of the 16 facilities. A table indicating the "radius of operation" for each of the 16 facilities is included in 47 C.F.R. § 27.1134(a).

⁷¹ Operations will continue indefinitely and on a primary basis at the Cherry Point and Yuma facilities. 47 C.F.R. § 27.1134(a)(1). In addition, airborne and military test range operations as well as Precision-Guided-Munitions (PGM) systems will continue to use the 1710-1720 MHz band on a primary basis, and AWS licensees will be required to protect these operations, until the systems are relocated to other spectrum, or PGM inventory is exhausted, whichever is earlier. 47 C.F.R. § 27.1134(a)(2).

⁷² 47 U.S.C. § 309(j)(15)(C) (codifying CSEA §203). Upon a finding by the NTIA that a Federal entity has achieved comparable capability of systems by relocating to a new frequency assignment or by utilizing an (continued....)

Until such time as the Government licensees have relocated to other spectrum, or NTIA de-authorizes an operation pursuant to CSEA, AWS operators shall be required to protect non-DOD Government systems operating in the 1710-1755 and 1755-1761 MHz bands in accordance with the provisions set forth in Section 27.1134(b) of the Commission's rules.⁷³ Information on the locations of these stations can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>. Points of contact for the government agencies involved can be found at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf/1710-1755MHz_points_of_contact.pdf.

31. AWS licensees operating fixed stations in the 1710-1755 MHz band, if notified that such stations are causing interference to radiosonde receivers operating in the Meteorological Aids Service in the 1675-1700 MHz band or meteorological-satellite earth receivers operating in the Meteorological-Satellite Service in the 1675-1710 MHz band, shall be required to modify the stations' location and/or technical parameters as necessary to eliminate the interference.⁷⁴

32. *The 2110-2155 MHz Band.* Fixed point-to-point microwave systems authorized under Part 101 of the Commission's rules will maintain primary status in the 2110-2150 MHz band unless and until an AWS or other emerging technology licensee requires use of the spectrum.⁷⁵ AWS licensees are required, prior to initiating operations from any base or fixed station, to coordinate their frequency usage with co-channel and adjacent channel incumbent Part 101 fixed-point-to-point microwave licensees operating in the 2110-2150 MHz band.⁷⁶ Similarly, BRS operations in the 2150-2160/62 MHz band will be relocated to other spectrum.⁷⁷ Until that occurs, AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent channel incumbent BRS licensees operating in the 2150-2160 MHz band.⁷⁸

33. AWS licensees operating in the 2110-2155 MHz band must protect previously licensed BAS and CARS operations in the adjacent 2025-2110 MHz band. In satisfying this requirement AWS licensees must, before constructing and operating any base or fixed station, determine the location and

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alternative technology, the NTIA shall terminate the entity's authorization and notify the Commission that the entity's relocation has been completed. The NTIA shall also terminate such entity's authorization if the NTIA determines that the entity has unreasonably failed to comply with the timeline for relocation submitted by the Director of the Office of Management and Budget under Section 118(d)(2)(B). 47 U.S.C. § 923(g)(6).

⁷³ 47 C.F.R. § 27.1134(b).

⁷⁴ See 47 C.F.R. §§ 27.1134(c), 27.1135.

⁷⁵ Emerging technology services in this band are AWS and the Mobile Satellite Service (including auxiliary terrestrial components, or "ATC"). See 47 C.F.R. §§ 101.69, 101.79(a).

⁷⁶ See 47 C.F.R. §§ 27.1131, 24.237.

⁷⁷ See *BRS Report and Order*, 19 FCC Rcd 14165, 14177-78, 14183-84 ¶¶ 23-24, 37-38, petitions for reconsideration pending. See also *AWS Eighth Report and Order*; *Big LEO Spectrum Sharing Order*. A five-megahertz portion of the 2110-2155 MHz band is currently used for Broadband Radio Service operations in the 2150-2160/62 MHz band. The Commission is currently considering relocation procedures that AWS-1 licensees will follow when relocating incumbent BRS licensees from the 2150-2160/62 MHz portion of the band.

⁷⁸ See 47 C.F.R. § 27.1132. See also *AWS Service Rules Order*, 18 FCC Rcd 25162, 25206 ¶ 115, petition for reconsideration pending. In the event that AWS and BRS licensees cannot reach agreement in coordinating their facilities, they may seek the assistance of the Commission, and the Commission may then, at its discretion, impose requirements on either or both parties. 47 C.F.R. § 27.1132. See also *AWS Eighth Report and Order* (seeking comment on interference standard for BRS relocation trigger).

licensee of all BAS or CARS stations authorized in their area of operation, and coordinate their planned stations with those licensees.⁷⁹

34. The National Aeronautics and Space Administration (“NASA”) operates the Deep Space Network (“DSN”) in the 2110–2120 MHz band at Goldstone, California. NASA will continue its operations of high power transmitters (nominal EIRP of 105.5 dBW with EIRP up to 119.5 dBW used under emergency conditions) in this band at this location.⁸⁰ AWS licensees must accept any interference received from the Goldstone DSN facility in this band.⁸¹

a. International Coordination

35. Operations in the 1710-1755 and 2110-2155 MHz bands must not cause harmful interference across the borders with Mexico and Canada. Until such time as agreements between the United States, Mexico and Canada become effective, the same technical restrictions at the border that are adopted for operation between geographic service areas will apply, to the extent they are not in violation of current bilateral agreements and arrangements.⁸² When interim arrangements or agreements between the United States, Mexico and Canada are final and become effective, licensees in the 1710-1755 and 2110-2155 MHz bands must comply with these agreements. In addition, if these agreements are modified in the future, licensees in the 1710-1755 and 2110-2155 MHz bands must comply with these modifications.

b. Quiet Zones

36. Advanced Wireless Services licensees must protect the radio quiet zones set forth in the Commission’s rules.⁸³ Licensees are cautioned that they must receive the appropriate approvals directly from the relevant quiet zone entity prior to operating within the areas described in the Commission’s rules.⁸⁴

5. Due Diligence

37. **We caution potential applicants formulating their bidding strategies to investigate and consider the extent to which AWS frequencies are occupied.** As stated above, operations in the AWS-1 bands must be protected and/or relocated to available frequencies typically in higher bands or to other media. These limitations may restrict the ability of AWS geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas. Bidders should become familiar with the status of these operations and relocation requirements, and applicable Commission rules, orders and any pending proceedings related to the service, in order to

⁷⁹ See 47 C.F.R. § 27.1133.

⁸⁰ See 47 C.F.R. § 27.1134(d).

⁸¹ See Section 27.50 of the Commission’s rules, which states in pertinent part: “A licensee operating a base or fixed station utilizing a power of more than 1640 watts EIRP must coordinate such operations in advance with all Government and non-Government satellite entities in the 2025–2110 MHz band.” 47 C.F.R. § 27.50.

⁸² Current agreements and coordination arrangements between the United States and Canada or Mexico may be found on the Commission’s website under <http://www.fcc.gov/ib/sand/agree/welcome.html>. Boundary limits using a predicted or measured 47 dBmV/m field strength limit for all 2110-2155 MHz transmissions addresses co-channel interference. Adjacent channel interference is addressed by 43 + 10 log₁₀(P) out-of-band emission limit for all transmissions, originating in both the 1710-1755 and 2110-2155 MHz bands.

⁸³ See 47 C.F.R. § 1.924.

⁸⁴ See *id.*

make reasoned, appropriate decisions about their participation in Auction No. 66 and their bidding strategy.

38. Potential bidders are reminded that they are solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the AWS-1 licenses in this auction. **The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in the Advanced Wireless Services subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.** Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

39. Potential bidders are strongly encouraged to conduct their own research prior to the beginning of bidding in Auction No. 66 in order to determine the existence of any pending administrative or judicial proceedings that might affect their decision regarding participation in the auction. Participants in Auction No. 66 are strongly encouraged to continue such research throughout the auction. In addition, potential bidders should perform technical analyses sufficient to assure themselves that, should they prevail in competitive bidding for a specific license, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

40. Applicants should also be aware that certain pending and future proceedings, including applications (including those for modification), petitions for rulemaking, requests for special temporary authority, waiver requests, petitions to deny, petitions for reconsideration, informal oppositions, and applications for review, before the Commission may relate to particular applicants or incumbent licensees or the licenses available in Auction No. 66. In addition, pending and future judicial proceedings may relate to particular applicants or incumbent licensees, or the licenses available in Auction No. 66. Prospective bidders are responsible for assessing the likelihood of the various possible outcomes, and considering their potential impact on spectrum licenses available in this auction.

41. Applicants should perform due diligence to identify and consider all proceedings that may affect the spectrum licenses being auctioned and that could have an impact on the availability of spectrum for Auction No. 66. In addition, although the Commission may continue to act on various pending applications, informal objections, petitions, and other requests for Commission relief, some of these matters may not be resolved by the time of the auction.

42. Applicants are solely responsible for identifying associated risks and for investigating and evaluating the degree to which such matters may affect their ability to bid on, otherwise acquire, or make use of licenses available in Auction No. 66.

43. Applicants may obtain information about non-Federal Government incumbent licenses that may have an effect on availability of licenses in Auction No. 66 through the Bureau's licensing databases on the World Wide Web at <http://wireless.fcc.gov/uls>. Part 101 fixed point-to-point microwave licenses can be identified by searching on the "Microwave Site-Based" service group and limiting the search to the frequency range 2110 MHz to 2150 MHz. Applicants may query the database online and download a copy of their search results if desired. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the upper right-hand corner of the License Search screen or by going to the Universal Licensing System ("ULS") support site at <http://esupport.fcc.gov/licensing.htm>. Applicants should direct questions regarding the ULS search capabilities to the FCC ULS Technical Support hotline at (877) 480-3201, option two. The hotline is available to assist with questions Monday through Friday, from 8:00 a.m. to 7:00 p.m. ET. In order to provide better service to the public, all calls to the hotline are recorded.

44. To further assist potential bidders in determining the scope of the new AWS entrants' relocation obligations in the 2150-2155 MHz band, the Commission ordered BRS licensees in the 2150-2160/62 MHz band to submit information on the locations and operating characteristics of BRS systems in that band.⁸⁵ That information may also be found on ULS at <http://wireless.fcc.gov/uls>. To obtain the information, potential bidders should use the ULS Advanced Application Search to search for modifications filed in the BR Radio Service between November 30, 2005, and December 27, 2005. Each application will need to be viewed to determine if it is a BRS Channel 1, 2/ 2A Notification. Additionally, the Commission has sought Office of Management and Budget ("OMB") approval under the Paperwork Act of 1995 to collect additional information on the locations and operating characteristics of BRS systems in that band.⁸⁶ If OMB approves this information collection, the Commission intends to give public notice announcing the deadline date for BRS licensees to file this additional data on ULS.

45. Information on the locations of non-DOD Government stations can be found at <http://www.ntia.doc.gov/osmhome/reports/specrelo/index.htm>; points of contact for the Government agencies involved can be found at http://www.ntia.doc.gov/osmhome/reports/specrelo/pdf/1710-1755MHz_points_of_contact.pdf.

46. The Commission makes no representations or guarantees regarding the accuracy or completeness of information in its databases or any third party databases, including, for example, court docketing systems. To the extent the Commission's databases may not include all information deemed necessary or desirable by an applicant, applicants may obtain or verify such information from independent sources or assume the risk of any incompleteness or inaccuracy in said databases. Furthermore, the Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into its databases.

47. Potential applicants are strongly encouraged to physically inspect any prospective sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the environmental assessment obligations described below in Section I.B.8.

6. Use of Integrated Spectrum Auction System

48. The Commission will make available a browser-based bidding system to allow bidders to participate in Auction No. 66 over the Internet using the Commission's Integrated Spectrum Auction System ("ISAS" or "FCC Auction System"). The Commission makes no warranty whatsoever with respect to the FCC Auction System. In no event shall the Commission, or any of its officers, employees or agents, be liable for any damages whatsoever (including, but not limited to, loss of business profits, business interruption, loss of business information, or any other loss) arising out of or relating to the existence, furnishing, functioning or use of the FCC Auction System that is accessible to bidders in connection with this auction. Moreover, no obligation or liability will arise out of the Commission's technical, programming or other advice or service provided in connection with the FCC Auction System.

7. Bidder Alerts

49. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use Auction No. 66 to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

⁸⁵ See "Licensees of Broadband Radio Service Channels 1 and/or 2/2A Must File Site and Technical Data by December 27, 2005," *Public Notice*, 20 FCC Rcd 19273 (2005).

⁸⁶ See Notice of Public Information Collection(s) being Submitted for Review to OMB, 71 FR 9127 (Feb. 22, 2006).

- ☐ The first contact is a “cold call” from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- ☐ The offering materials used to invest in the venture appear to be targeted at IRA funds, for example, by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- ☐ The amount of investment is less than \$25,000.
- ☐ The sales representative makes verbal representations that: (a) the Internal Revenue Service (“IRS”), Federal Trade Commission (“FTC”), Securities and Exchange Commission (“SEC”), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws; or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

50. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 326-2222 and from the SEC at (202) 942-7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876-7060. Consumers who have concerns about specific proposals regarding Auction No. 66 may also call the FCC Consumer Center at (888) CALL-FCC ((888) 225-5322).

8. National Environmental Policy Act Requirements

51. Licensees must comply with the Commission’s rules regarding implementation of the National Environmental Policy Act (“NEPA”).⁸⁷ The construction of a wireless antenna facility is a federal action and the licensee must comply with the Commission’s NEPA rules for each such facility.⁸⁸ The Commission’s NEPA rules require, among other things, that the licensee consult with expert agencies having NEPA responsibilities, including the U.S. Fish and Wildlife Service, the State Historic Preservation Office, the Army Corps of Engineers and the Federal Emergency Management Agency (through the local authority with jurisdiction over floodplains). In assessing the effect of facilities construction on historic properties, the licensee must follow the provisions of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process.⁸⁹ The licensee must prepare environmental assessments for facilities that may have a significant impact in or on wilderness areas, wildlife preserves, threatened or endangered species or designated critical habitats, historical or archaeological sites, Indian religious sites, floodplains, and surface features. The licensee also must prepare environmental assessments for facilities that include high intensity white lights in residential neighborhoods or excessive radio frequency emission.

C. Auction Specifics

1. Auction Date

52. Bidding in Auction No. 66 will begin on Thursday, June 29, 2006, as announced in the *Auction No. 66 Comment Public Notice*.⁹⁰ The initial schedule for bidding will be announced by public notice at least one week before the start of the auction.

⁸⁷ 47 C.F.R. Ch. 1, Subpart I.

⁸⁸ 47 C.F.R. §§ 1.1305-1.1319.

⁸⁹ See 47 C.F.R. Part 1, Appendix C.

⁹⁰ *Auction No. 66 Comment Public Notice* at 1.

53. Several commenters addressed the date on which bidding in Auction No. 66 will commence. Generally, commenters expressed support for commencing the auction on June 29, 2006.⁹¹ In its support for keeping to that start date, T-Mobile noted that the date coincides with the schedule outlined by CSEA.⁹² A few commenters, however, expressed concern about the start date. For example, MetroPCS and Columbia Capital/MC Ventures suggested additional time may be needed if the final auction procedures significantly differed from the typical auction procedures.⁹³ Verizon Wireless offered that the Bureau should begin the auction two weeks later than originally scheduled, to take into account the Independence Day (July 4th) holiday.⁹⁴

54. We do not find sufficient cause to delay the start of Auction No. 66, and therefore, will commence the competitive bidding as scheduled, i.e., on June 29, 2006. We agree with the majority of the parties who commented on this issue that it is in the public interest to make AWS spectrum available as soon as it is both reasonable and consistent with CSEA. As described in detail elsewhere in this Public Notice, we have decided to proceed with standard, single SMR auction for the AWS-1 licenses. Therefore, the concerns raised by some about time needed to prepare for package bidding are moot. Moreover, we note that bidders have approximately one month to prepare their short-form applications and over two months to prepare their bidding strategies before the auction commences.

55. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

2. Auction Title

56. Auction No. 66 – Advanced Wireless Services (AWS-1)

3. Bidding Methodology

57. As discussed in more detail below, the bidding methodology for Auction No. 66 will be simultaneous multiple round bidding.⁹⁵ The Commission will conduct this auction over the Internet using the FCC Auction System, and telephonic bidding will be available as well. Qualified bidders are permitted to bid electronically via the Internet or by telephone.⁹⁶ All telephone calls are recorded.

4. Pre-Auction Dates and Deadlines

58. Dates and Deadlines

Auction Seminar.....	April 24, 2006
Short-Form Application (FCC Form 175) Filing Window Opens	April 24, 2006; 12:00 p.m. ET
Short-Form Application (FCC Form 175) Filing Window Deadline ...	May 10, 2006; 6:00 p.m. ET
Upfront Payments (via wire transfer)	June 1, 2006; 6:00 p.m. ET

⁹¹ T-Mobile Comments at 2-3; Alltel Comments at 1; CTIA Comments at 4; RTG Comments at 9; U.S. Cellular Comments at 4.

⁹² T-Mobile Reply Comments at 1-3.

⁹³ MetroPCS Comments at 3-6; Columbia/MC Comments at 8-9. MetroPCS specifically suggests that the Commission allow a minimum of 60 days between the release of the auction procedures and the short-form application deadline. MetroPCS Comments at 5. MetroPCS added that the additional time would not necessarily require a change in the auction start date; rather, the Bureau could reduce the time between the short-form filing deadline and the auction start. *Id.* at note 11.

⁹⁴ Verizon Wireless Comments at 1.

⁹⁵ See Section IV.A.1. “Simultaneous Multiple Round Auction,” *infra*.

⁹⁶ For additional information regarding ISAS, including sample screen shots, visit the “About ISAS” web page at http://wireless.fcc.gov/auctions/about_isas.

Mock Auction..... June 26, 2006
 Auction Begins June 29, 2006

5. Requirements for Participation

59. Those wishing to participate in the auction must:

- ☐ Submit a short-form application (FCC Form 175) electronically prior to 6:00 p.m. Eastern Time (ET), May 10, 2006, following the electronic filing procedures set forth in Attachment D to this Public Notice.
- ☐ Submit a sufficient upfront payment and an FCC Remittance Advice Form (FCC Form 159) before 6:00 p.m. ET, June 1, 2006.
- ☐ Comply with all provisions outlined in this Public Notice and applicable Commission rules.

6. General Contact Information

60. General Contact Information Table

GENERAL AUCTION INFORMATION

General Auction Questions
 Seminar Registration

FCC Auctions Hotline
 (888) 225-5322, option two;
 or (717) 338-2868
 Hours of service: 8:00 a.m. – 5:30 p.m. ET,
 Monday through Friday

AUCTION LEGAL INFORMATION

Auction Rules, Policies, Regulations

Auctions and Spectrum Access Division
 (202) 418-0660

LICENSING INFORMATION

Service Rules, Policies, Regulations
 Licensing Issues, Engineering Issues
 Due Diligence, Incumbency Issues

Broadband Division
 (202) 418-0200

TECHNICAL SUPPORT

Electronic Filing
 FCC Auction System

FCC Auctions Technical Support Hotline
 (877) 480-3201, option nine; or (202) 414-1250
 (202) 414-1255 (TTY)
 Hours of service: 8:00 a.m. – 6:00 p.m. ET,
 Monday through Friday

PAYMENT INFORMATION

Wire Transfers
 Refunds

FCC Auctions Accounting Branch
 (202) 418-0578
 (202) 418-2843 (Fax)

AUCTION BIDDER LINE

Will be furnished only to qualified bidders

FCC COPY CONTRACTOR

Additional Copies of
 Commission Documents

Best Copy and Printing, Inc
 445 12th Street, SW, Room CY-B402
 Washington, DC 20554
 (800) 378-3160
<http://www.bcpweb.com>

PRESS INFORMATION

Chelsea Fallon (202) 418-7991

FCC FORMS

(800) 418-3676 (outside Washington, DC)
(202) 418-3676 (in the Washington area)
<http://www.fcc.gov/formpage.html>

ACCESSIBLE FORMATS

Braille, large print, electronic files, or
audio format for people with disabilities

Consumer and Governmental Affairs Bureau
(202) 418-0530 or (202) 418-0432 (TTY)
fcc504@fcc.gov

FCC INTERNET SITES

<http://www.fcc.gov>
<http://wireless.fcc.gov/auctions>
<http://wireless.fcc.gov/uls>

II. SHORT-FORM APPLICATION (FCC FORM 175) REQUIREMENTS

61. An application to participate in an FCC auction, referred to as a short-form application or FCC Form 175, provides information used in determining whether the applicant is legally, technically, and financially qualified to participate in Commission auctions for licenses or permits.⁹⁷ The short-form application is the first part of the Commission's two-phased auction application process. In the first phase of this process, parties desiring to participate in the auction file streamlined, short-form applications in which they certify under penalty of perjury as to their qualifications.⁹⁸ Eligibility to participate in bidding is based on the applicants' short-form applications and certifications as well as their upfront payments, explained below.⁹⁹ In the second phase of the process, winning bidders file a more comprehensive long-form application.¹⁰⁰

62. Entities seeking licenses available in Auction No. 66 must file a short-form application electronically via the FCC Auction System before 6:00 p.m. ET on May 10, 2006, following the procedures prescribed in Attachment D to this Public Notice. If an applicant claims eligibility for a bidding credit, the information provided in its FCC Form 175 will be used in determining whether the applicant is eligible for the claimed bidding credit. Applicants bear full responsibility for submitting accurate, complete and timely short-form applications. All applicants must certify on their short-form applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license.¹⁰¹ Applicants should read the instructions set forth in Attachment D to this Public Notice carefully and should consult the Commission's rules to ensure that, in addition to the materials described below, all the information that is required under the Commission's rules is included with their short-form applications.

63. An entity may not submit more than one short-form application for a single auction. In the event that a party submits multiple short-form applications, only one application will be accepted for filing.

⁹⁷ See 47 C.F.R. § 1.2105.

⁹⁸ See *id.*; *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2376 ¶ 163.

⁹⁹ See Section III.D. "Upfront Payments – Due June 1, 2006," *infra*.

¹⁰⁰ See 47 C.F.R. § 1.2107.

¹⁰¹ See 47 C.F.R. § 1.2105(a)(2)(v).

64. Applicants also should note that submission of a short-form application constitutes a representation by the certifying official that he or she is an authorized representative of the applicant, that he or she has read the form's instructions and certifications, and that the contents of the application, its certifications, and any attachments are true and correct. Submission of a false certification to the Commission may result in penalties, including monetary forfeitures, license forfeitures, ineligibility to participate in future auctions, and/or criminal prosecution.

A. Preferences for Small Businesses and Others

1. Size Standards for Bidding Credits

65. A bidding credit represents the amount by which a bidder's winning bid will be discounted. For Auction No. 66, bidding credits will be available to small businesses and very small businesses, and consortia thereof, as follows:

- ☐ A bidder with attributed average annual gross revenues that exceed \$15 million and do not exceed \$40 million for the preceding three years ("small business") will receive a 15 percent discount on its winning bid.¹⁰²
- ☐ A bidder with attributed average annual gross revenues that do not exceed \$15 million for the preceding three years ("very small business") will receive a 25 percent discount on its winning bid.¹⁰³

66. Bidding credits are not cumulative; a qualifying applicant receives either the 15 percent or 25 percent bidding credit on its winning bid, but not both.

67. Every applicant that claims eligibility for a bidding credit as either a small business or a very small business, or a consortium of small businesses or very small businesses, will be required to provide information regarding revenues attributable to the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests on its FCC Form 175 short-form application to establish that it satisfies the applicable eligibility requirement.¹⁰⁴ Applicants considering claiming eligibility as a designated entity in Auction No. 66 should review carefully the recently released *CSEA/Part 1 Designated Entity FNPRM*. The Commission stated in the *CSEA/Part 1 Designated Entity FNPRM* that it intends to complete that proceeding so that any resulting rule modifications will apply to Auction No. 66.¹⁰⁵ In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should "restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider,'" and sought comment on how to define the elements of such a restriction.¹⁰⁶ The Commission also sought comment on whether to restrict the award of designated entity benefits where an otherwise qualified designated entity has a "material relationship" with a large entity that has a significant interest in communications services.¹⁰⁷ The Commission further proposed that in the event that any designated entity applicants have filed an application to participate in an auction prior to the effective date of any designated entity rule

¹⁰² 47 C.F.R. § 1.2110(f)(2)(i).

¹⁰³ 47 C.F.R. § 1.2110(f)(2)(iii).

¹⁰⁴ 47 C.F.R. §§ 1.2105, 1.2110(b)(1)(i). See Section II.E. "Bidding Credit Revenue Disclosures," *infra*, and Attachment D.

¹⁰⁵ *CSEA/Part 1 Designated Entity FNPRM* at ¶ 1.

¹⁰⁶ *Id.* at ¶¶ 1, 11.

¹⁰⁷ *Id.* at ¶¶ 1, 19.

changes adopted pursuant to the *CSEA/Part 1 Designated Entity FNPRM*, such applicants would be required to amend their applications on or after the effective date of the rule changes with a statement declaring, under penalty of perjury, that the applicant is qualified as a designated entity pursuant to section 1.2110 of the Commission's rules effective as of the date of the statement.¹⁰⁸ Finally, the Commission noted that under this proposal the Bureau will establish any detailed procedures necessary for making required amendments and announce such procedures by public notice.¹⁰⁹ Accordingly, applicants considering claiming eligibility as a designated entity in Auction No. 66 should monitor further proceedings pursuant to the *CSEA/Part 1 Designated Entity FNPRM* to assure their ability to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 66.

2. Tribal Lands Bidding Credit

68. To encourage the growth of wireless services in federally recognized tribal lands, the Commission has implemented a tribal lands bidding credit. As discussed in greater detail in Section V.E. of this Public Notice, the Commission will award pro rata tribal lands bidding credits in the event that the sum of all net winning bids at the close of bidding, exclusive of tribal lands bidding credits, is not sufficient funds both to meet the reserve price and to award all eligible applicants full tribal lands bidding credits.¹¹⁰

3. Installment Payments

69. Installment payment plans will not be available in Auction No. 66.

B. License Selection

70. In Auction No. 66, applicants must select the licenses on which they want to bid from the "Eligible Licenses" list. In Auction No. 66, FCC Form 175 will include a filtering mechanism that allows an applicant to filter the available licenses. The applicant will make selections for one or more of the filter criteria and the system will produce a list of licenses satisfying the specified criteria. The applicant may select all the licenses in the customized list or select individual licenses from the list. Applicants also will be able to select licenses from one customized list and then create additional customized lists to select additional licenses. There will be no opportunity to change license selection after the short-form filing deadline.¹¹¹ It is critically important that an applicant confirm its license selections before submitting its short-form application because the FCC Auction System will not accept bids on licenses that an applicant has not selected on its FCC Form 175.

C. Disclosure of Bidding Arrangements

71. Applicants will be required to identify in their short-form applications all parties with whom they have entered into any agreements, arrangements, or understandings of any kind relating to the licenses being auctioned, including any agreements relating to post-auction market structure.¹¹² Applicants also will be required to certify under penalty of perjury in their short-form applications that they have not entered and will not enter into any explicit or implicit agreements, arrangements or understandings of any kind with any parties, other than those identified in the application, regarding the

¹⁰⁸ *Id.* at ¶ 21.

¹⁰⁹ *Id.* at ¶ 21, n.54.

¹¹⁰ See Section V.E. "Tribal Lands Bidding Credit," *infra*.

¹¹¹ 47 C.F.R. § 1.2105(b)(2).

¹¹² 47 C.F.R. § 1.2105(a)(2)(viii), (c)(1).

amount of their bids, bidding strategies, or the particular licenses on which they will or will not bid.¹¹³ If an applicant has had discussions, but has not reached a joint bidding agreement by the short-form application filing deadline, it would not include the names of parties to the discussions on its application and may not continue such discussions with any applicants after the deadline.¹¹⁴

72. After the filing of short-form applications, the Commission's rules do not prohibit a party holding a non-controlling, attributable interest in one applicant from acquiring an ownership interest in or entering into a joint bidding arrangement with other applicants provided that (i) the attributable interest holder certifies that it has not and will not communicate with any party concerning the bids or bidding strategies of more than one of the applicants in which it holds an attributable interest, or with which it has entered into a joint bidding arrangement; and (ii) the arrangements do not result in a change in control of any of the applicants.¹¹⁵ While the anti-collusion rules do not prohibit non-auction related business negotiations among auction applicants, applicants are reminded that certain discussions or exchanges could touch upon impermissible subject matters because they may convey pricing information and bidding strategies.¹¹⁶ Further, as discussed above, compliance with the disclosure requirements of the Commission's anti-collusion rule will not insulate a party from enforcement of the antitrust laws.¹¹⁷

D. Ownership Disclosure Requirements

73. All applicants must comply with the uniform Part 1 ownership disclosure standards and provide information required by Sections 1.2105 and 1.2112 of the Commission's rules.¹¹⁸ Specifically, in completing the short-form application, applicants will be required to fully disclose information on the real party or parties-in-interest and ownership structure of the applicant.

74. Applicants considering claiming eligibility as a designated entity in Auction No. 66 should carefully monitor the recently initiated rulemaking proceeding concerning the Commission's designated entity rules.¹¹⁹ In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should "restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider,'" and sought comment on how to define the elements of such a restriction. The Commission also sought comment on whether to restrict the award of designated entity benefits where an otherwise qualified designated entity has a "material relationship" with a large entity that has a significant interest in communications services.¹²⁰ The Commission stated that it intended any changes adopted in this proceeding to apply to AWS licenses to be offered in Auction No. 66.¹²¹ Depending upon the outcome of that proceeding, applicants may be required to disclose additional ownership information in order to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 66.

¹¹³ 47 C.F.R. § 1.2105(a)(2)(ix).

¹¹⁴ See Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws," *supra*.

¹¹⁵ 47 C.F.R. § 1.2105(c)(4)(i), (ii).

¹¹⁶ See Section I.B.2 "Prohibition of Collusion; Compliance with Antitrust Laws," *supra*.

¹¹⁷ See *id*.

¹¹⁸ 47 C.F.R. § 1.2105 requires the disclosure on the short-form of the applicant's ownership information as set forth in 47 C.F.R. § 1.2112.

¹¹⁹ *CSEA/Part 1 Designated Entity FNPRM* at ¶¶ 1, 11.

¹²⁰ *Id.* at ¶¶ 1, 19.

¹²¹ *Id.* at ¶ 21.

75. An applicant's most current ownership information on file with the Commission, if in an electronic format compatible with the short-form application (FCC Form 175) (such as information submitted in an on-line FCC Form 602 or in an FCC Form 175 filed for a previous auction using ISAS) will automatically be entered into the applicant's short-form application. Applicants are responsible for ensuring that the information submitted in their Form 175 for Auction No. 66 is complete and accurate. Accordingly, applicants should carefully review any information automatically entered to confirm that it is complete and accurate as of the deadline for filing the short-form application. Applicants can update any information that was entered automatically and needs to be changed directly in the short-form application.

E. Bidding Credit Revenue Disclosures

76. To determine which applicants qualify for bidding credits as small businesses or very small businesses, the Commission considers the gross revenues of the applicant, its affiliates, its controlling interests, and the affiliates of its controlling interests.¹²² Therefore, entities applying to bid as small businesses or very small businesses (or consortia of small businesses or very small businesses) will be required to disclose on their FCC Form 175 short-form applications the gross revenues of each of the following for the preceding three years: (1) the applicant, (2) its affiliates, (3) its controlling interests, and (4) the affiliates of its controlling interests.¹²³ Certification that the average annual gross revenues of such entities and individuals for the preceding three years do not exceed the applicable limit is not sufficient. In order to comply with the Commission's disclosure requirements for bidding credit eligibility, an applicant must provide separately for itself, its affiliates, its controlling interests, and the affiliates of its controlling interests, the gross revenues for each of the preceding three years. If the applicant is applying as a consortium of small businesses or very small businesses, this information must be provided for each consortium member.¹²⁴

77. Applicants considering claiming eligibility as a designated entity in Auction No. 66 should review carefully the recently released *CSEA/Part 1 Designated Entity FNPRM*. In the *CSEA/Part 1 Designated Entity FNPRM*, the Commission tentatively concluded that it should "restrict the award of designated entity benefits to an otherwise qualified designated entity where it has a 'material relationship' with a 'large in-region incumbent wireless service provider,'" and sought comment on how to define the elements of such a restriction.¹²⁵ Depending upon the outcome of that proceeding, applicants may be required to disclose additional information regarding gross revenues of related parties in order to comply with any changes to the designated entity rules that the Commission may adopt that are applicable to applicants in Auction No. 66.

78. Controlling interests of an applicant include individuals and entities with either *de facto* or *de jure* control of the applicant. Typically, ownership of at least 50.1 percent of an entity's voting stock evidences *de jure* control. *De facto* control is determined on a case-by-case basis.¹²⁶ The following are some common indicia of *de facto* control:

¹²² § 1.2110(b); see also *Part 1 Fifth Report and Order*, 15 FCC Rcd at 15323-27, ¶¶ 59-67.

¹²³ § 1.2110(b).

¹²⁴ The recently adopted *CSEA/Part 1 Report and Order* will modify the procedure by which a consortium that is a winning bidder will apply for a license. See *CSEA/Part 1 Report and Order* at ¶¶ 51-52, petitions for reconsideration pending. Applicants applying as consortia should review the *CSEA/Part 1 Report and Order* to understand how the members of the consortia will apply for a license in the event they are winning bidders.

¹²⁵ *CSEA/Part 1 Designated Entity FNPRM* at ¶¶ 1, 11.

¹²⁶ For further guidance on the issue of *de facto* control, see the Commission's affiliation rule at 47 C.F.R. § 1.2110(b)(5); see also *Intermountain Microwave*, 12 FCC 2d 559, 560 (1963), and *Application of Baker Creek* (continued....)